

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARC GREEN,

Plaintiff,

v.

SAFEWAY INC., et al.,

Defendants.

CASE NO. 3:22-CV-5309-DWC

ORDER ON PARTIAL MOTION FOR
SUMMARY JUDGMENT

Currently before the Court is Plaintiff Marc Green's Motion for Partial Summary Judgment Regarding Medical Treatment and Bills ("Motion").¹ The Court concludes there is no genuine dispute of material fact regarding whether Plaintiff is entitled to medical bills totaling \$46,697.39 arising from injuries he sustained on April 11, 2021. However, the evidence shows a genuine dispute of material fact exists regarding whether Plaintiff is entitled to the remaining \$52,435.59 requested. Therefore, the Court finds the Motion (Dkt. 18) should be granted-in-part and denied-in-part.

¹ Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 13.

1 **I. Background**

2 Plaintiff alleges, in April 2021, he purchased a vase and succulent from Defendant
 3 Safeway, Inc. Dkt. 1-2. Plaintiff contends the vase was manufactured by Defendant Livetrends
 4 Design Group, LLC. *Id.* Plaintiff states that, after purchasing the succulent, he “picked up his
 5 purchase by grasping the lip of the vase with his hand. Moments later, the glass vase broke in his
 6 hand.” *Id.* at ¶ 3.6. Plaintiff contends, as a result of the vase breaking, he suffered a deep
 7 laceration that severed tendons and nerves in his wrist, causing permanent injury. *Id.* at 3.7.

8 Plaintiff filed the Motion on June 1, 2023. Dkts. 18, 19 (supporting evidence).
 9 Defendants filed their Response on June 20, 2023, Dkts. 21, 25 (supporting evidence), and
 10 Plaintiff filed his Reply on June 23, 2023. Dkt. 26. After review of the Motion, Response, Reply,
 11 and the record as a whole, the Court concludes oral argument is unnecessary.

12 **II. Standard of Review**

13 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, “the court shall grant
 14 summary judgment if the movant shows that there is no genuine dispute as to any material fact
 15 and the movant is entitled to judgment as a matter of law.” A party asserting a fact cannot be or
 16 is genuinely Summary judgment is proper only if the pleadings, discovery, and disclosure
 17 materials on file, and any affidavits, show that there is no genuine dispute as to any material fact
 18 and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving
 19 party is entitled to judgment as a matter of law when the nonmoving party fails to make a
 20 sufficient showing on an essential element of a claim in the case on which the nonmoving party
 21 has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine
 22 issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to
 23 find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
 24 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply

1 “some metaphysical doubt”); *see also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a
 2 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
 3 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby,*
 4 *Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
 5 626, 630 (9th Cir. 1987).

6 **III. Motion to Strike**

7 In his Reply, Plaintiff moves to strike the Declaration of Erin O’Connell, Defendants’
 8 expert, alleging her methodology is improper. Dkt. 26. The Court notes the Federal Rules of
 9 Evidence will “ordinarily govern in diversity cases.” *Wray v. Gregory*, 61 F.3d 1414, 1417 (9th
 10 Cir. 1995). “Absent a showing that a state rule of evidence is ‘intimately bound up with the
 11 state’s substantive decision making,’ the Federal Rules drive the Court’s analysis. *Hill v.*
 12 *Novartis Pharms. Corp.*, 944 F. Supp. 2d 943, 962 (E.D. Cal. 2013) (quoting *Feldman v. Allstate*
 13 *Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003)). At this time, Plaintiff has not adequately shown the
 14 state law he relies upon is intimately bound with the state’s substantive decision making;
 15 therefore, the Court will not strike Ms. O’Connell’s declaration based on Plaintiff’s state law
 16 arguments. Moreover, the Court finds Plaintiff’s brief citation to Federal Rules of Evidence 402
 17 and 702, without more, is insufficient to show Ms. O’Connell’s declaration should be stricken.
 18 Importantly, parties often disagree about the correct methodology for calculating damages, and
 19 “much, if not most of the time, a court would decline to exclude either approach.” *Brewster v.*
 20 *City of Los Angeles*, No. 2023 WL 3374458, at *84 (C.D. Cal. May 9, 2023). The Court finds
 21 Plaintiff has not shown Ms. O’Connell’s declaration should be stricken based on her allegedly
 22 flawed methodology. Therefore, Plaintiff’s request to strike Ms. O’Connell’s declaration is
 23 denied.
 24

1 **IV. Discussion**

2 Plaintiff requests the Court find, as a matter of law, that Plaintiff's medical bills in the
3 amount of \$ 99,132.98 were necessary and reasonable to treat the injuries he sustained on April
4 11, 2021. Dkt. 18. Defendants assert that approximately half the charges were either
5 unreasonable or unrelated to the treatment of Plaintiff's injuries. Dkt. 21.

6 A. Evidence

7 The evidence shows Plaintiff was treated in the emergency department at Good
8 Samaritan Hospital on April 11, 2021 with a laceration to his right wrist. Dkt. 20, Schuster Dec.,
9 ¶ 4. Plaintiff presented to Dr. James Wyman, an orthopedic physician, for follow-up treatment
10 and was referred to Dr. Ryan Riel, an orthopedic surgeon, for surgery. *Id.* at ¶¶ 5-7. Plaintiff had
11 surgery on his wrist on April 30, 2021. *Id.* at ¶ 7. He presented to the emergency department at
12 Good Samaritan Hospital in Bonney Lake for post-op concerns, including forearm redness; he
13 was prescribed antibiotics. *Id.* at ¶ 9. Plaintiff's treatments after surgery included occupational
14 therapy at Olympic Sports & Spine. *Id.* at ¶¶ 8, 11. He also was treated by UW Medicine/Valley
15 Medical Center for post-injury depression and anxiety. *Id.* at ¶ 10.

16 Plaintiff has presented evidence showing Plaintiff's treatment at MultiCare (including
17 MultiCare Orthopedic & Sports Medicine, Good Samaritan Hospital – Tacoma, Tacoma General
18 Hospital and Good Samaritan Hospital – Bonney Lake), UW Medicine/Valley Medical Center,
19 LabCorp, TRA, Rainer Anesthesiology, PacMed, and Olympic Sports & Spine was caused by
20 the broken vase that lacerated his wrist on April 11, 2021 and was necessary to treat his injuries.
21 Dkt. 20, Schuster Dec., ¶¶ 12-20. Further, medication that Plaintiff was prescribed and received
22 from Wal-Mart Pharmacy was necessary to treat his injuries. *Id.* at ¶ 18.

1 Plaintiff also submitted evidence showing the billings for treatment for his injuries were
2 reasonable. Dkt. 20, Fountaine Dec. Specifically, evidence shows the following medical bills
3 were reasonable: MultiCare (including MultiCare Orthopedic & Sports Medicine, Good
4 Samaritan Hospital – Tacoma, Tacoma General Hospital and Good Samaritan Hospital – Bonney
5 Lake) in the amount of \$92,978.95; UW Medicine/Valley Medical Center in the amount of
6 \$1,051.00; LabCorp in the amount of \$348.40; TRA in the amount of \$28.00; Rainer
7 Anesthesiology in the amount of \$1,330.00; PacMed in the amount of \$225.00; and Olympic
8 Sports & Spine in the amount of \$3,046.00. *See id.* at ¶¶ 6-14. Further, billings for medication
9 from Wal-Mart Pharmacy in the amount of \$125.63 were reasonable. *Id.* at ¶ 12. In sum,
10 Plaintiff’s evidence shows billings for treatment related to Plaintiff’s April 11, 2021 injuries,
11 totaling \$99,132.98, was reasonable. *Id.* at ¶ 14.

12 Defendants submitted evidence showing several of the billings requested by Plaintiff
13 either do not conform to the usual and customary and reasonable standard (“UCR”) or are
14 unrelated to the injuries Plaintiff sustained when the vase broke. Dkt. 25, O’Connell Dec.
15 Defendants’ evidence shows charges on the billings from U.W. Medicine/Valley Medical Center
16 in the amount of \$558.00, Lab Corp in the amount of \$199.70, and Connexus Pharmacy System
17 in the amount of \$10.59 are unrelated to the injuries Plaintiff sustained on April 11, 2021. *Id.*
18 The evidence also shows that several charges exceed the UCR. There is evidence that the
19 MultiCare charges exceed the UCR in an amount of \$41,317.21, the PacMed charges exceed the
20 UCR in an amount of \$179.32; and the Olympic Sport & Spine charges exceed the UCR in an
21 amount of \$149.55. *Id.* at 13-15.

1 B. Reasonable and Necessary

2 In a negligence case, a plaintiff may recover only the reasonable value of medical
3 services received, not the total of all bills paid. *Torgeson v. Hanford*, 79 Wash. 56, 58-59, 139 P.
4 648 (1914). “Thus, the plaintiff must prove that medical costs were reasonable and, in doing so,
5 cannot rely solely on medical records and bills.” *Patterson v. Horton*, 84 Wash. App. 531, 543,
6 (1997). Medical records and bills are relevant to prove past medical expenses only if supported
7 by additional evidence which shows the treatment and bills were both necessary and reasonable.
8 *Id.*

9 Plaintiff submitted evidence showing the medical bills and treatment Plaintiff received
10 from MultiCare, UW Medicine/Valley Medical Center, LabCorp, TRA, Rainer Anesthesiology,
11 Pacific Medical Inc, Wal-Mart Pharmacy, and Olympic Sports & Spine were both necessary and
12 reasonable to treat the injuries he sustained on April 11, 2021. Dkt. 20, Schuster & Fountaine
13 Decs. Defendant, however, submitted evidence showing Plaintiff is attempting to recover
14 medical expenses that are unrelated to the injuries sustained on April 11, 2021 and unreasonable.
15 Dkt. 25, O’Connell Dec. For example, there is evidence Plaintiff sought recovery for expenses
16 from an annual physical medical exam and for medications unrelated to his injuries. *Id.* at 13-15.
17 Further, Defendant submitted evidence that several of the medical bills exceeded the UCR and
18 were, therefore, unreasonable. Defendants do not dispute the necessity and reasonableness of
19 medical bills in the amount of \$46,697.39. *See* Dkt. 21.

20 As there is a dispute regarding the necessity and reasonableness of several medical bills,
21 the Court finds Plaintiff has not shown the Motion should be granted in full. However, as the
22 parties do not dispute the necessity and reasonableness of medical bills totaling \$46,697.39, the
23 Court finds the Motion should be granted-in-part and denied-in-part.
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